

### **REMARKS/ARGUMENTS**

Prior to entry of this amendment, the application included claims 30-34, 39-40, 42 and 44-49. No claims have been amended, canceled, or added. Hence, after entry of this Amendment, claims 30-34, 39-40, 42 and 44-49 stand pending for examination.

Claims 30-34, 39-40, 42 and 44-49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,169,894 B1 to McCormick et al. ("McCormick") in view of U.S. Patent No. 5,200,954 to Teel, Jr. et al. ("Teel").

#### **Rejections Under 35 U.S.C. § 103(a)**

The Applicants respectfully traverse and request reconsideration of the rejections of all claims rejected under 35 U.S.C. § 103(a). The cited references do not teach or suggest all the claims elements, and the record has not established that all claim elements can be found in the prior art. Specifically, the cited references do not teach or suggest, "establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset if the second wireless handset is determined to be outside the cell site coverage area, wherein the second wireless channel is different than the first wireless channel" as recited in claim 30. Claim 40 includes a similar element.

In its immediately prior response, the Applicants successfully argued that the cited references do not teach or suggest this. The pending Office Action appears to concede this, arguing now that this element "is not very critical and is clearly a design choice." The office action supports this assertion with reference to the Applicant's disclosure, wherein the recited element is discussed as an item in a flow chart. The Applicants respectfully point out, however, that teaching multiple embodiments in the Detailed Description of the specification IS NOT evidence of mere design choice. More directly, it is not within the purview of the Examiner to dismiss patentable features as mere design choice.

Accordingly, independent claims 30 and 40, and all remaining claims that depend from them, recite features that are not taught or suggested by the cited references and have not

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been shown to exist in the prior art. All pending claims are, therefore, believed to be allowable, at least for this reason.

### **CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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